is not to go into a tank unless he gets a safety report from the safety promoter.

When a vessel arrives at the yard for repair a project supervisor is assigned to the vessel. He is the person in sole and complete charge of the repair of the vessel. He makes all the decisions including when to enter a confined space. He would liaise with the heads of the various departments regarding the repair jobs that have to be done.

If the work entails entry into a tank or confined space he would, after he had issued the work orders, personally go to the machinery department to get the fitters to open the manhole first. Then he would go to the electrical department to arrange for lighting and powered blower. He will tell them which is the place to be ventilated and where to put up the lights. Then he would go to the safety promoter assigned to the vessel and ask him to check the tanks for gases. The safety promoter would check the tank and submit a report to the project supervisor. The report will state whether the tanks are gas free or not and the ventilation to be provided.

In this instance the gas detection report of the safety promoter (AB 14) was addressed to the deceased and signed by Abu Bakar bin Omar, one of the persons who collapsed in Centre Tank No. 5 and who subsequently died. The report stated that four tanks port, four tanks starboard and one tank centre were examined and found to be gas-free. The one tank centre that was examined was not Centre Tank No. 5 but Centre Tank No. 6 and the examination was made on October 4, 1976. The safety promoter expressed the view that the tanks examined were free from flammable vapours and he made the remarks: "confirmed fit for hot works, adequate ventilation should be provided during process."

The evidence of Abdullah (P.W.4) as to the remarks of the safety promoter in AB 14 is this:

"It means it is safe for workers to do hot works in the tank provided ventilation is provided during the process. "Hot works" means involve use of fire, acetylene torch, etc. If no hot works is to be done it would be safe to go into the tank. If no hot works is to be done you don't require ventilation, according to this report. Before such a report is issued the safety promoter, as a matter of procedure, would inspect the tank for gas free and ventilating and when he is satisfied then such a report would be issued. .....

This report is really a clearance from the safety promoter that it was safe to enter the tank. This was the procedure in the yard. A project supervisor would not enter a tank without such a report. "To my knowledge no project supervisor had entered into a tank without such a report."

The last person to see the deceased alive was Davis. It is clear that the deceased could not have fallen into the tank accidentally. The deceased must have entered the tank by himself. The other persons who collapsed in the tank had entered the tank later in an attempt to rescue the deceased.

The deceased was a very experienced project supervisor. The deceased knew that he needed the clearance of the safety promoter, that a powered blower was necessary to ventilate the tank and he knew that a powered blower was coming, yet he wilfully entered the tank alone with no one present in the compartment ignoring all the safety procedures adopted by the defendants in connection with entering a freshly opened tank which contained water and where extensive rusting had taken place.

As to the allegation that the employers were in breach of statutory duty, I find on the facts of this case that there is no substance in any of the complaints. Even if there is any substance in any of them there is no evidence that the breach caused or materially contributed to the death of the deceased. (See *Bonnington Castings Ltd.* v. *Wardlaw).*

This accident was caused solely by the negligence of the deceased. The claim of the plaintiff is dismissed with costs.

Claim dismissed.

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*

ART TREND LTD. v. BLUE DOLPHIN (PTE.) LTD. & ORS.

[O.C.J. (Lai Kew Chai J.) September 15, 1982]

[Singapore – Civil Suit No. 1804 of 1982]

Practice and Procedure – Interim Mareva injunctions – Claim for removal – Hardship to defendants.

The plaintiffs in this case claimed against the first and second defendants the total sum of US$728,468.65 under bills of exchange drawn by the plaintiffs and accept-

ed by the defendants, and return guarantees given by both defendants in favour of the plaintiff. The plaintiffs obtained interim *Mareva* injunction against the defendants which sought to freeze the assets of both defendants to US$1.23 million. In effect, both the defendants were restrained from removing from Singapore any of their asset or assets (including immovable properties and moneys in bank accounts) in which they were beneficially interested, or otherwise pledging them or giving them by way of security. The defendants were also restrained from re-directing any payments made or to be made by their debtors from their accounts with their several banks. At least twelve banks of the defendants were served with the injunction order. The business operations of the defendants were brought to a grinding halt.

Held: (1) there was no justification in the plaintiffs freezing US$1.23 million worth of assets of the defendants when the effective total claim against the defendants was only US$728,468.65;

(2) there was not the slightest hint of any intention on the part of the second defendants to dispose of their properties throughout the subsistence of the relationship between the plaintiffs and the second defendant;

(3) the plaintiffs' conduct in asking for the *Mareva* injunctions was calculated to pressurize the defendants and bring them to their knees. It was wholly unjust to interfere with the ordinary business transactions of the defendants with their bankers. As a result, great harm had been done to the defendants' standing in the eyes of the bankers as a result of the service of the *Mareva* injunctions. For some two weeks the daily transactions of the defendants were brought to a grinding halt and they consequently suffered loss of colossal sums of money. The conduct of the plaintiffs was reprehensible;

(4) the injunctions would accordingly be discharged and damages against the plaintiffs would be ordered.

Cases referred to:–

(1) *The "Genie"* [1979] 2 Lloyd's Rep. 184, 189.
(2) *Searose Ltd.* v. *Seatrain U.K. Ltd.* [1981] 1 W.L.R. 894, 897.
(3) *Barclay-Johnson* v. *Yuill* [1980] 3 All E.R. 190, 194.

CIVIL SUIT.

Yang Lih Shyng for the plaintiffs/applicants.
M. Karthigesu for the defendants.

Cur. Adv. Vult.

Lai Kew Chai J.: At the conclusion of the hearing of the Plaintiffs' motion to continue the interim *Mareva* injunctions obtained on May 6, 1982, as varied on May 21, 1982, I discharged the injunctions. I also ordered the Plaintiffs to pay the 1st and 2nd Defendants damages to be assessed by the Registrar which the 1st and 2nd Defendants had sustained by reason of the interim injunctions. I now give my reasons.

By this action commenced on May 5, 1982 the Plaintiffs made two claims against the 1st Defendants, a Singapore company, viz: (1) the sum of US$33,943.05 under a bill of exchange due on July 17, 1981 drawn by the Plaintiffs and accepted by the 1st Defendant plus interest and commission under a discounting and financing agreement entered into between them and dated February 12, 1980; and (2) the sum of US$326,202.17 under a written guarantee dated November 11, 1981 given by the first Defendant in favour of the Plaintiffs and in which the 1st Defendant had guaranteed the payment of all the liabilities of a Nigerian company known as Ojomo Industries (Nigeria) Limited (hereinafter referred to as "Ojomo") plus interest at the date of the Writ amounting to US$128,394.23 and further interest, and commission payable under the guarantee.

The plaintiffs have also asserted two claims against the 2nd Defendant, a partnership in Singapore, viz: (1) the sum of US$182,407.93 under a bill of exchange due on May 6, 1981 drawn by the Plaintiff and accepted by the 2nd Defendant plus interest as at the date of the Writ amounting to US$56,521.27 and further interest and commission payable under a discounting and financing agreement entered into between them and also dated February 12, 1980; and (2) the sum of US$326,202.17 under a written guarantee dated April 21, 1980 given by the 2nd Defendants in favour of the Plaintiffs and in which the 2nd Defendants had guaranteed payment of all the liabilities of the 1st Defendant plus interest as at the date of the Writ amounting to US$128,394.23 and further interest and commission. It should be noted that the 2nd claim against the 2nd Defendants arises out of the self-same Ojomo's liabilities to the Plaintiffs.

Seeing that the second claims of the Plaintiffs against both the 1st and 2nd Defendants, as sureties, arise out of the self-same liabilities of Ojomo, the total claims of the Plaintiffs on the two bills of exchange and under the guarantees are approximately US$727,468.65 plus further interest and commission. I have mentioned this global figure of the claims as against both Defendants because, as will be seen later in these grounds of decision, the interim injunctions obtained had sought to freeze the assets of both Defendants up to US$1.23 million. It is also clear that the Plaintiffs by the interim injunctions had effectively frozen one set of assets of the 1st Defendant and another set of assets of the 2nd Defendant for their single claim arising out of the liabilities of Ojomo.

On the day following the filing of the Writ

of Summons, the Plaintiffs obtained *ex parte* the interim *Mareva* injunctions against both Defendants. In effect both the Defendants were restrained from removing from Singapore or otherwise disposing, whether within or without the jurisdiction, of any of their asset or assets (including immovable properties and moneys in bank accounts) in which they were beneficially interested, or otherwise pledging them or giving them by way of security.

The Defendants were also restrained from re-directing any payments made or to be made by their debtors from their accounts with their several banks.

Paragraph 3 of the injunctions stated as follows:–

"The Defendants shall not be prevented from dealing in any way with their assets in so far as the assets of the Defendants available to meet the Plaintiffs' claim herein exceed in aggregate the sum of US$1,230,000/–."

At least twelve banks of the Defendants were served with the injunction order. The business operations of the Defendants were brought to a grinding halt. The proviso was of no assistance to the Defendants. As the Plaintiffs well knew, or must have known, unless each of the Defendants had assets in a bank which in each bank exceeded US$1.23 million, the banks could not, and quite properly would not, as they did not, allow any further transactions in the accounts of both the Defendants. I was also unable to see any justification in the Plaintiffs freezing US$1.23 million worth of assets of the Defendants. After all, their effective total claim against both of them was only US$728,468.65 plus further interest and commission.

The Defendants protested vigorously against the interim injunctions. By their solicitors' letter dated May 10, 1982 the 2nd Defendants pointed out that the claims against them as pleaded amounted to US$740,261.53 whereas the injunction sought to freeze assets up to US$1.23 million. They asserted that they were an old established firm in Singapore which enjoyed a very good reputation with bankers and that the service of the injunctions on all their bankers had brought their daily transactions to a grinding halt.

They also referred to the two landed properties which were covered specifically by the injunctions, namely the building known as "Malaysia Arcade" at No. 75 High Street, Singapore and No. 9 Lyndhurst Road, Singapore. Both properties are owned as to ¾ shares thereof by the three partners in the 2nd Defendant firm. They are together worth S$7.3 million. The valuation does not appear to me to be unreasonable. The first property is subject only to a S$100,000 mortgage. It is quite evident that the 2nd Defendants have owned these assets for a long time, as the Plaintiffs well knew, and they were in themselves more than sufficient to meet the claims of the Defendants. The 2nd Defendants indicated that they had never intended to dispose of these properties, as their long ownership of them amply demonstrated.

In the circumstances, they requested the Plaintiffs to give notice to all the bankers of the 2nd Defendants that they, the Plaintiffs, would not be enforcing their rights under the injunctions in relation to the bank accounts of the 2nd Defendants. But the Plaintiffs stood firm. They kept on the pressure. It was only some eleven days later that they agreed to a variation of the injunctions as contained in the Order of this court dated May 21, 1982. Both the Defendants had required and had agreed to the variation to lift the freeze on their bank accounts without prejudice to their right to have the interim injunctions as varied discharged.

I now turn to the facts giving rise to these proceedings. I begin by saying something about the parties to these proceedings and Ojomo.

The Plaintiffs are a company with limited liability incorporated in England. They are a confirming house and as such they finance international trade. They also purchase goods and sell them or pass documents of title to their customers on such terms as have been previously agreed.

The 1st Defendant are a company with limited liability incorporated in Singapore in June 1979. They handle the exports of electronic component parts from Singapore and the Far East to Ojomo of Nigeria. They have a paid up capital of one million shares of S$1 each, of which 999,998 are held by Sunny Lane Investments Ltd. of Nassau, Bahamas. The other two shares are held by Henry Chow and Sally Phuan. The directors are Chaterbhuj s/o Hassaram (hereinafter called "Chaterbhuj"), one of the partners of the 2nd Defendants, and Hiro Gurmukhdas Kishnani of Lagos, Nigeria (hereinafter called "Kishnani").

The 2nd Defendants are a partnership of three

brothers, including Chaterbhuj. They have been registered as a firm and have been in business since June 9, 1947. They were importers and exporters of textiles. They are in the world renowned High Street textile centre. They are also in real estate. They also buy and sell all manner of electronic goods and components. They buy these from suppliers in Hong Kong and Japan and sell them to buyers in Indonesia and Nigeria.

Ojomo are a company incorporated in Nigeria in 1979 by Kishnani and one Nigerian national, Mr. Ojomo. They are engaged in the assembly and sale of electronics in Nigeria and they import electronic components for the use of their factory in Lagos.

In February 1980 Chaterbhuj visited the Plaintiffs and asked for discounting and financing facilities to pay for the 2nd Defendants' purchase and sale of electronic component parts to Ojomo. The Plaintiffs were initially unenthusiastic about financing exports to Nigeria as the risks were extraordinary. But in view of the Plaintiffs' past associations with the 2nd Defendants as confirmers and importers and exporters of merchandise, and the high reputation of the 2nd Defendants, the Plaintifffs agreed to offer discounting and financing facilities up to Stg £300,000 to the 2nd Defendants. By an agreement dated February 12, 1980 the plaintiffs agreed to extend to the 2nd Defendants facilities up to Stg £300,000 for opening sight letter of credit and discounting bills of exchange up to a maximum tenor of 120 days D/A. It was agreed, amongst other things, that all bills would be drawn by the Plaintiffs with a fixed due date of 120 days from the date of Plaintiffs' payment to the suppliers of the 2nd Defendants. On top of the commission of 4% flat on the invoice value, interest was payable at 3% over LIBOR from the date of negotiation in London until payment.

At about the same time, the Plaintiffs also agreed to extend to the 1st Defendant facilities up to Stg £150,000 on terms similar to those which were agreed with the 2nd Defendants.

On April 21, 1980 the 2nd Defendants signed a guarantee in writing in favour of the Plaintiffs irrevocably guaranteeing payment of any amount "present or future", and the actual and contingent liabilities of the 1st Defendant.

By September 1980, the 2nd Defendants had accepted twelve bills of exchange drawn on them by the Plaintiffs under the financing and discounting agreement. They totalled approximately US$1,083,285.45. These bills of exchange were fully honoured and paid.

In late September 1980, the 1st Defendant had bought electronic component parts from suppliers in the Far East for export to Ojomo. The suppliers had to be paid. Without going into details of the negotiations regarding this particular financing, the Plaintiffs in the event drew six 150 days D/A bills of exchange on Ojomo for acceptance. On or about November 18, 1980 Ojomo accepted them and they were payable on March 20, 1981. The total amount of the six bills of exchange was $326,202.17. Ojomo defaulted and these bills form the subject matter of the second claims of the Plaintiffs against both the Defendants.

In turn, the Plaintiffs had upon Ojomo's acceptance discounted the six bills of exchange with their bankers, one of whom in October 1981 lost their patience and recovered the proceeds of the bill discounted from the Plaintiffs.

When Ojomo defaulted, it appears that the 1st Defendant and the 2nd Defendants were also owing the Plaintiffs on the bills of exchange they had accepted. According to the Plaintiffs the 2nd Defendants, for instance, was owing the Plaintiffs US$1,010,120.19 when the latter wrote them on October 8, 1981. But by the time these proceedings were commenced the following May, the Plaintiffs were suing the Defendants on only two bills of exchange which I had described earlier. Substantial sums under various bills since September 1980 up to early this year had been paid by the 2nd Defendants.

But since the Ojomo bills were outstanding, the Plaintiffs kept pressing for payment. Finally, on November 11, 1981 the Plaintiffs obtained from the 1st Defendant a written guarantee under which the 1st Defendant irrevocably guaranteed payment of all "present or future" liabilities of Ojomo to the Plaintiffs.

In the event, Ojomo defaulted. There were considerable delays and it appears Chaterbhuj gave one excuse after another.

The Plaintiffs, as I have stated at the beginning of these grounds of decision, commenced these proceedings and obtained the *Mareva* injunctions against both the Defendants..

I will now say a few words about the practice

of issuing *Mareva* injunctions in Singapore. *Mareva* injunctions have been issued by the High Court in Singapore for some years now. They have been issued under sub-section 4(8) of the Civil Law Act, Cap. 30. The sub-section in terms are equivalent to the former section 45 of the English Supreme Court of Judicature (Consolidation) Act 1925, since replaced and expanded. The latter provision was the basis on which an injunction, later known by the soubriquet "*Mareva* Injunction", was for the first time granted in England in May 1975: see Colin Ying, The *Mareva* Injunction and Pre-trial Attachment [1981] 2 M.L.J. cvii. In Singapore, they have been issued in addition to and notwithstanding the alternative procedure which is available for the attachment of property before judgment under Part III of The Debtors Act, Cap. 19.

Sub-section 4(8) of the Civil Law Act, Cap. 30 states:—

"A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court, either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made."

What is "just and convenient" in any case to a court in exercising its discretion is not possible to, and obviously should not, be encapsulated into a set of rigid principles. Each case must turn on the merits of its facts. But applicants for a *Mareva* injunction have been required to observe five guidelines: *The "Genie"*[1] per Denning M.R. Since its inception, the interlocutory remedy has grown apace and has become a potent weapon to plaintiffs. The temptation to go outside the scope of the discretion is there.

The case before me is one, in my view, where the purpose for which *Mareva* injunctions were given was overlooked. The relevant guideline which was overlooked by the Plaintiffs was the requirement that they had to give some grounds for believing that there is a risk of the assets of both the Defendants being removed out of Singapore before the judgment, if any, is satisfied.

It is timely to record what Goff J. (as he then was) recently said in *Searose Ltd.* v. *Seatrain U.K. Ltd.*[2]

"But care must be taken to ensure that such injunctions are only given for the purpose for which they are intended, viz. to prevent the possible abuse of a defendant removing assets in order to prevent the satisfaction of a judgment in pending proceedings: and likewise, care must be taken to ensure that such injunctions do not bear harshly upon innocent third parties. If the principles are not observed, a weapon which was forged to prevent abuse may become an instrument of oppression."

The cornerstone of the interlocutory remedy was also emphasised by Sir Robert Megarry V-C. in *Barclay-Johnson* v. *Yuill*[3]:

"It seems to me that the heart and core of the *Mareva* injunction is the risk of the defendant removing his assets from the jurisdiction and so stultifying any judgment given by the courts in the action. If there is no real risk of this, such an injunction should be refused; if there is a real risk, then if the other requirements are satisfied the injunction ought to be granted, . . ."

I should note that Sir Robert Megarry V-C. also stated that the fact that a defendant is not a foreigner, or is within the jurisdiction of the courts in the United Kingdom, is not by that mere fact a bar to the granting of a *Mareva* injunction. But, in determining the risk of the removal of the assets the learned Vice-Chancellor pointed out that the defendant's nationality, domicile and residence are material factors. To this, I would respectfully add the course of dealings between the parties and the historical antecedents of the defendant's business.

Before the injunction is issued, I also must consider the potential effect or hardship on the Defendants' business if it is granted.

The evidence on the risk of the Defendants removing the assets were these. One Kishore Bhagwandas Hirdaramani, the export manager, swore a lengthy affidavit in support of the application. Towards the end of his affidavit, he complained of the Defendants' delaying tactics. He alleged that the 1st Defendant had made considerable profits but have failed to file the statutory accounts. He also alleged that Chaterbhuj had told him in November 1981 that Ojomo was owing 1st Defendant some US$13 million.

As was known to the Plaintiffs, Ojomo had also defaulted on the 1st Defendant. They had some 370 bills of exchange outstanding. The total figure is US$29 million. The 1st Defendant had debtors and when a particular sum of US$251,557.01 was received by them from a debtor in April 1982 it was equitably distributed amongst the creditors of the 1st Defendant.

On the danger of the Defendants disposing of their assets, Hirdaramani could only say this in his affidavit: "With (the Defendants') experience

in international finance and in transfer of funds, it is highly probable that they will successfully dispose of their assets or re-direct funds coming to the firm on the subject transactions so as to deprive the Plaintiffs of the fruits of any judgment that may be entered herein." This statement is baffling to me. In my view, knowledge of the practice of international finance and transfers of funds is not evidence of a predisposition to remove assets to frustrate any judgment.

As against this statement of a speculative nature, the facts are overwhelmingly in favour of the Defendants. If the Plaintiffs succeed, the bulk of their claims will have to be paid by the 2nd Defendants under their guarantee for the liabilities of the 1st Defendant, who as I have pointed out, had guaranteed Ojomo's liabilities. As far as the 2nd Defendants are concerned, their remarkable business antecedents since 1947 and financial standing were known to the Plaintiffs. The Plaintiffs were told of the Plaintiffs' substantial ownership of the building known as Arcade Malaysia. The accounts for year ended March 31, 1980 of the 2nd Defendants which were given to the Plaintiffs in early 1980 showed the property with a book value of S$3 million. The 2nd Defendants also substantially own No. 9 Lyndhurst Road, Singapore with a book value of S$345,973.05. Both properties are said to be worth S$7.3 million and I have no reason not to accept the valuation. There is not the slightest hint of any intention on the part of the 2nd Defendants to dispose of these properties which have remained their property throughout the subsistence of the relationship between the Plaintiffs and the 2nd Defendants.

Similarly, the 1st Defendant own a shop unit at Katong Plaza which is subject to a mortgage of S$150,000. They have substantial receivables totalling US$29 million. Undoubtedly, they have creditors but their cash flow difficulties are evidently caused by Ojomo's default as well.

The Plaintiffs themselves gave the 1st Defendants and Ojomo time of well over a year to pay. The Ojomo bills were due since March, 1981. Some nine months later, they managed, and were willing, to secure their position by getting a guarantee from the 1st Defendant on November 11, 1981, who willingly gave it. The latter could have refused. By reason of the underlying guarantee given earlier by the 2nd Defendants, they apparently also willingly assumed responsibility for the Ojomo bills as well. These conduct of the Defendants were certainly not those of a defendant who was likely to remove assets or abscond.

In these circumstances, the Plaintiffs were entirely unjustified in asking for the *Mareva* injunctions. I was satisfied that the Plaintiffs' conduct was calculated to pressurise the Defendants and bring them to their knees. It was wholly unjust to interfere with the ordinary business transactions of the Defendants with their bankers. I was also satisfied that great harm has been done to the Defendants' standing in the eyes of their bankers as a result of the service of the *Mareva* injunctions. For some two weeks the daily transactions of the Defendants were brought to a grinding halt and one wonders the depth of the crisis of confidence which both the Defendants have had to endure, seeing that they were themselves owed colossal sums of money and were facing acute liquidity problems. I found the conduct of the Plaintiffs reprehensible.

I accordingly discharged the injunctions and ordered damages against the Plaintiffs to be assessed by the Registrar.

Order accordingly.

Solicitors: *Rodyk & Davidson; Khattar, Wong & Partners.*